Supreme Court, U.S.
FILED

No. 99- 99 292 AUG 16 1999

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1999

SALLY B. MCCARTY, Commissioner of the Indiana Department of Insurance and Liquidator of Classic Fire & Marine Insurance Co.,
Petitioner,

v.

ALICE BROWN, UNITED STATES FIRE INSURANCE COMPANY and ROBERT HEARIN,
Respondents.

Petition for a Writ of Certiorari to the Supreme Court of the State of Louisiana

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PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

What credit is due, under the national full faith and credit command, to a state court's anti-suit injunction in the courts of another state?

PARTIES TO THE PROCEEDINGS

The parties to the proceedings below include the plaintiff, Alice Brown, intervenors United States Fire Insurance Company and Robert Hearin, and defendants State Farm Mutual Automobile Insurance Company, John L. Retif, Laurie Hechler, Orleans Parish School Board, First Horizon Insurance Company, First Horizon's successor, Classic Fire & Marine Insurance Company, and Sally B. McCarty, Commissioner of the Indiana Department of Insurance and Liquidator of Classic Fire & Marine Insurance Company.

RULE 29.1 LISTING

Pursuant to Supreme Court Rule 29.1, Class Fire & Marine Insurance Company, whose remaining assets are at stake in Respondent's claim and in the Marion Circuit Court liquidation proceeding that gave rise to the anti-suit injunction involved in this case, has no non-wholly-owned insurance subsidiaries. Concord General Corporation is the parent company of Class Fire & Marine.

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PETITION FOR A WRIT OF CERTIORARI

Sally B. McCarty, Commissioner of the Indiana Department of Insurance, respectfully petitions for a writ of certiorari to review the final order of the Supreme Court of Louisiana denying a stay of the trial court proceedings in this case.

OPINIONS BELOW

The Supreme Court of Louisiana's unpublished final order denying McCarty's application for a supervisory writ to stay the proceedings of the trial court is reprinted in the appendix at Pet. App. 1a. The Louisiana Fourth Circuit Court of Appeals' unpublished order denying McCarty's application is reprinted at Pet. App. 2a. The Civil District Court for the Parish of Orleans's unpublished order denying McCarty's petition for stay is reprinted at Pet. App. 9a. The Marion Circuit Court's unpublished liquidation order containing the stay at issue in this case is reprinted at Pet. App. 17a.

JURISDICTION

The Louisiana Supreme Court issued its order denying McCarty's application for a supervisory writ staying the trial court proceedings on May 17, 1999. This Court has jurisdiction over this petition under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article IV of the Constitution of the United States provides:

> Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State[.]

U.S. Const. art. IV, § 1.

Title 28 of the United States Code provides in relevant part:

> [J]udicial proceedings . . . shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

28 U.S.C. § 1738.

STATEMENT

This case raises the fundamental issue whether the courts of one state must accord full faith and credit to an anti-suit injunction issued by a court of another state. In *Baker v. General Motors Corp.*, 118 S. Ct. 657, 665 n. 9 (1998), this Court explicitly recognized conflicts among the lower courts concerning the enforcement of anti-suit injunctions in sister state courts and emphasized that the Court "has not yet ruled on the credit due to a state court injunction barring a party from maintaining litigation in another State." This case squarely presents that important and unresolved issue.

1. Petitioner Sally B. McCarty is the Commissioner of the Indiana Department of Insurance and the court-appointed Liquidator of Classic Fire & Marine Insurance Co. ("Classic Fire"), an Indiana-domiciled insurance company. McCarty is statutorily responsible for, among other things, protecting policyholders, creditors and the public at large from the consequences that follow when an Indiana insurance company becomes insolvent. *See* Ind. Code § 27-9-3-1.

In 1997, Classic Fire's economic condition deteriorated, posing a financial danger to its policyholders and to the public. Accordingly, McCarty moved to rehabilitate the company. At McCarty's request, an Indiana trial court (the Marion Circuit Court) issued a January 7, 1998, rehabilitation order that enjoined the prosecution of all lawsuits against Classic Fire. Pet. App. 15a-16a. McCarty's rehabilitation efforts proved unsuccessful and on October 28, 1998, McCarty sought final liquidation of Classic Fire in the Indiana court.

On December 18, 1998, the Indiana court issued a final order liquidating Classic Fire. This liquidation order (i) directed McCarty to marshal all of Classic Fire's remaining assets; (ii) instructed claimants how and where to assert claims against these remaining assets; and (iii), critically, continued to enjoin the prosecution of all lawsuits against Classic Fire. Pet. App.

17a, 20a-23a. Under Indiana law, the Indiana court had general jurisdiction to liquidate Classic Fire and to determine the rights of all parties claiming an interest in Classic Fire's remaining assets. Pet. App. 18a.

2. As both Rehabilitator and Liquidator of Classic Fire, McCarty sought to enforce the stay of cases pending against Classic Fire. *See* Ind. Code §§ 27-9-3-4, 27-9-3-12. One such case is this lawsuit. When the Indiana court issued its liquidation order, Respondent Alice Brown's action was pending in the Civil District Court for the Parish of Orleans, Louisiana. Brown had sued, among others, First Horizon Insurance Company, Classic Fire's predecessor-in-interest,[1] to recover for alleged injuries arising out of an automobile accident. Pet. App. 3a-5a.

On May 7, 1999, based on the Indiana court's anti-suit injunction, McCarty petitioned the Civil District Court for the Parish of Orleans to stay its proceedings against Classic Fire. Pet. App. 9a. The Louisiana trial court denied McCarty's petition. According to the Louisiana court, McCarty was not entitled to a stay because "Indiana . . . has not adopted the 'Uniform Insurers Liquidation Law'" and, therefore, is not a "reciprocal" state. Pet. App. 9a.

3. McCarty unsuccessfully applied to the Louisiana Fourth Circuit Court of Appeals, and ultimately to the Louisiana Supreme Court, for a supervisory writ that would stay the trial court proceedings. To both courts, McCarty argued that the Full Faith and Credit Clause (and 28 U.S.C. § 1738, the federal statute that enforces it) requires the Louisiana courts to honor the Indiana anti-suit injunction and to stay Brown's lawsuit. The Louisiana Fourth Circuit Court of Appeals and the Louisi-

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[1] While the Louisiana lawsuit was pending, First Horizon changed its name to Classic Indemnity Company. Later, Classic Fire & Marine merged with Classic Indemnity.

ana Supreme Court denied McCarty's applications. Pet. App. 1a, 2a. This petition seeks review of the Louisiana Supreme Court's order denying McCarty's application.[2]

REASONS FOR GRANTING THE WRIT

In *Baker v. General Motors Corp.*, 118 S. Ct. 657, 665 n. 9 (1998), this Court left open the conflict-laden issue whether the Full Faith and Credit Clause requires a court of one state to honor an anti-suit injunction issued by a court of another state. The confusion surrounding this issue was observed not only by the *Baker* majority, but also by Justice Kennedy's concurrence, which stressed that "there is disagreement among the state courts as to their duty to recognize decrees enjoining proceedings in other courts." *Id.* at 669 (Kennedy, J., concurring). This issue, the *Baker* concurrence continued, is "at once so fundamental and so delicate [that it should be] addressed only in a case necessarily requiring [its] discussion . . . ." *Id.* at 670. This is that case.

The lower courts have struggled mightily to determine the extent to which the Full Faith and Credit Clause requires interstate recognition of anti-suit injunctions. Some courts, such as the Supreme Court of Texas, have held that the Full Faith and Credit Clause applies to anti-suit injunctions just as it applies to other legal and equitable remedies. Other courts have refused to accord full faith and credit to anti-suit injunctions and for a variety of reasons. Some have straightforwardly held that the Full Faith and Credit Clause does not apply to anti-suit injunctions. Others have agreed, even while concluding that discretionary notions of comity require such recogni-

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Following the Louisiana Supreme Court's order and an ensuing trial, the trial court entered judgment against McCarty on June 28, 1999. However, this petition seeks certiorari only to the Louisiana Supreme Court based on its denial of McCarty's application for a supervisory writ to stay the trial court proceedings. The petition does not, of course, seek certiorari directly to the trial court based on its entry of judgment against McCarty.

tion in some instances. Still others have held that anti-suit injunctions are "in personam" and therefore are not binding on other courts. For its part, Louisiana, like some other states, will not enforce an anti-suit injunction arising from an insurance liquidation unless the issuing state has adopted Louisiana's preferred uniform liquidation act.[3]

It is vital that this Court clarify the morass of foreign anti-suit injunction authority. Anti-suit injunctions are the linchpin of state regulation of insurance insolvencies. Without them, insurance regulators, and the state courts that adjudicate insolvency proceedings, cannot provide for the orderly rehabilitation and liquidation of failed insurance companies. Anti-suit injunctions also arise in a range of other contexts that routinely affect every state, such as domestic relations proceedings and garden-variety personal-injury lawsuits. Yet the lower courts proceed in inconsistent directions in deciding whether to enforce foreign state anti-suit injunctions. In this case, the Louisiana Supreme Court exacerbated these conflicts when it incorrectly denied full faith and credit to the Indiana court's anti-suit injunction. This case presents an ideal vehicle for the Court to cut through the confusion and resolve the existing conflicts.

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[3] There are at least two uniform insurance liquidation acts: The Uniform Insurance Liquidation Act (UILA) and the National Association of Insurance Commissioners (NAIC) Model Act. The Louisiana trial court concluded that Indiana and Louisiana do not subscribe to the same uniform act, and therefore are not "reciprocal" states. Pet. App. 9a.

I. THE COURTS ARE IN DISARRAY OVER THE CREDIT DUE, UNDER THE NATIONAL FULL FAITH AND CREDIT COMMAND, TO STATE COURT ANTI-SUIT INJUNCTIONS.

The Louisiana Supreme Court's decision to ignore the Indiana court's anti-suit injunction follows from long-standing Louisiana law, which provides that Louisiana courts will honor foreign insurance liquidation anti-suit injunctions only from "reciprocal" states. *See Martin v. General Am. Cas. Co.*, 76 So.2d 537 (La. 1954). The Louisiana Supreme Court's decision directly conflicts with those of other states' high courts.

A. Courts Are In Deep Conflict Over The Enforceability Of Sister State Anti-Suit Injunctions.

In contrast to the Louisiana Supreme Court, the courts of several states fully honor foreign state anti-suit injunctions. For example, in *Bard v. Charles R. Myers Ins. Agency, Inc.*, 839 S.W.2d 791 (Tex. 1992), the Texas Supreme Court held that the Full Faith and Credit Clause requires state courts to enforce foreign insurance liquidation anti-suit injunctions. In *Bard*, the Vermont Banking and Insurance Commissioner, acting as Liquidator for Ambassador Insurance Company, brought a lawsuit in Texas seeking premiums that an insurance agency had not paid to Ambassador's estate. The insurance agency counterclaimed, alleging that Ambassador's pre-receivership management had wrongly declined to issue some policies. Based on an anti-suit injunction that the Vermont receivership court had entered, the Texas Supreme Court ordered Ambassador's counterclaims to be dismissed. The Texas Supreme Court held that "the Texas trial court below was required to give full faith and credit to an order issued by a Vermont receivership court." *Id.* at 792.

Significantly, the Texas Supreme Court based this holding on its conclusion that "[t]he full faith and credit clause requires that a valid judgment from one state be enforced in other states regardless of the laws or public policy of the other states." *Id.* at 794. Louisiana courts ignore this principle. Louisiana courts instead hold that, because Indiana uses a different model insurance liquidation act than that which Louisiana prefers, Louisiana courts will not enforce an Indiana court's liquidation order. Pet. App. 9a. *See also Martin*, 76 So.2d at 541-42. Thus, the Texas and Louisiana courts' decisions are fundamentally irreconcilable. *See also Bryant v. Shields, Britton & Fraser*, 930 S.W.2d 836, 843 (Tex. App. 1996) (holding that the Full Faith and Credit Clause requires enforcement of a foreign insurance liquidation anti-suit injunction).

Texas is not the only state whose courts accord full faith and credit to foreign insurance liquidation anti-suit injunctions. In *State ex. rel. Low v. Imperial Ins. Co.*, 682 P.2d 431, 439 (Ariz. Ct. App. 1984), the Arizona Court of Appeals held that the Full Faith and Credit Clause required it to enforce an anti-suit injunction that was part of a California court's liquidation order. Moreover, courts have similarly relied on the full faith and credit doctrine in enforcing anti-suit injunctions outside the insurance liquidation context. *See, e.g.*, *Corbin v. Corbin*, 226 A.2d 799, 803 (Conn. Super. Ct. 1967) (staying an action to modify a West Virginia court's divorce decree in view of the need to give full faith and credit to the West Virginia court's related anti-suit injunction).

While Louisiana's courts have charted a course diametrically opposed to that of courts such as Texas's, others have set off on yet a third course: the courts of Mississippi, Wisconsin and Alabama rely on the equitable and discretionary notion of interstate comity to decide whether to enforce foreign anti-suit injunctions. These courts have held that, so long as the court issuing the injunction had jurisdiction over the party that it enjoined, sister state courts should enforce that injunction to

promote the uniformity and harmony of the law. *See, e.g., Equitable Life Assur. Soc'y of United States v. Gex' Estate*, 186 So. 659, 666 (Miss. 1939); *Fisher v. Pacific Mut. Life Ins. Co.*, 72 So. 846, 848 (Miss. 1916); *Gilman v. Ketcham*, 54 N.W. 395 (Wis. 1893); *see also Hall v. Milligan*, 128 So. 438, 440 (Ala. 1930) (stating that "the court in the foreign state usually will not, as a matter of comity, permit the party to disobey an injunction issued in another state.").

On yet another tack, some courts have concluded that comity concerns have no relevance to anti-suit injunctions. In *State ex rel. Dykhouse v. Edwards*, 908 S.W.2d 686 (Mo. 1995), the Supreme Court of Missouri ruled that comity was not a proper basis for an insurance receiver to enforce a Michigan court's anti-suit injunction. According to the *Dykhouse* court, "comity extends to substantive rights only and does not generally apply to remedies" such as anti-suit injunctions. *Id.* at 690. The *Dykhouse* case also noted that "the rule of comity is 'a matter of courtesy, complaisance, respect — not of right but of deference and good will.'" *Id.* at 689 (quoting *Ramsden v. Illinois*, 695 S.W.2d 457, 459 (Mo. 1985)). Thus, according to the reasoning of the Missouri Supreme Court, there is no consistent doctrine of comity on which a party seeking to enforce a foreign anti-suit injunction may rely.

Similarly, in *Kleinschmidt v. Kleinschmidt*, 99 N.E.2d 623 (Ill. App. Ct. 1951), the court recognized that under principles of comity the trial court could properly have honored a Florida court's injunction barring the parties to a divorce proceeding over which it had jurisdiction from pursuing a separate divorce action in Illinois. The trial court's refusal to honor the injunction, however, was discretionary and would "not render the decision [on the merits] void or erroneous . . . ." *Id.* at 626. *See also Doyle v. Northern Pac. Ry. Co.*, 55 F.2d 708, 710 (D. Minn. 1932) (holding that comity does not require enforcement of a foreign anti-suit injunction); *Cook v. Delmarva Power & Light Co.*, 505 A.2d 447, 449 (Del. Super. Ct. 1985) (refusing

to enforce a New York anti-suit injunction on the basis of comity). Thus, according to *Dykhouse* and *Kleinschmidt*, comity does not provide any reviewable or enforceable legal standard. As with the conflict over whether to enforce foreign anti-suit injunctions generally, then, courts cannot help but be confused over whether and how comity may apply to anti-suit injunctions.

Illinois courts sometimes decide whether to enforce a foreign anti-suit injunction based on which court — the court that issued the injunction or the court that has been asked to stay its own suit — first had jurisdiction. In *James v. Grand Trunk W. R.R. Co.*, 152 N.E.2d 858, 866-67 (Ill.), *cert. denied,* 358 U.S. 915 (1958), for example, the Illinois Supreme Court held that the trial court was not required to accord full faith and credit to a Michigan anti-suit injunction because the Illinois court acquired jurisdiction before the Michigan court did so. *See also Taylor v. Atchison, T. & S.F. Ry. Co.* 11 N.E.2d 610, 613 (Ill. App. Ct. 1937), *cert. denied,* 304 U.S. 560 (1938) (holding that a Kansas anti-suit injunction was ineffective because the Illinois suit was underway before the Kansas suit). But even this principle may not provide consistent results. *See Lowe v. Norfolk & W. Ry. Co.*, 421 N.E.2d 971, 977 (Ill. App. Ct. 1981) (noting that the "prior jurisdiction" rule does not apply where the sister-state proceeding is necessary "to do complete justice between the parties.").

Finally, still other courts have flatly refused to honor anti-suit injunctions at all. The Supreme Court of Minnesota, for example, has held that foreign anti-suit injunctions are simply unenforceable under the Privileges and Immunities Clause of Article IV, § 2 of the Constitution. *See, e.g., Union Pac. Ry. Co. v. Rule*, 193 N.W. 161, 162 (Minn. 1923); *State ex rel. Bossung v. District Court*, 168 N.W. 589, 591 (Minn. 1918). Further, the Minnesota Supreme Court and the Illinois Court of Appeals both have held that foreign insurance receivership anti-suit injunctions are not enforceable against a plaintiff over

whom the court issuing the injunction did not have personal jurisdiction. *Fuhrman v. United America Insurors*, 269 N.W.2d 842, 848 (Minn. 1978); *Mahan v. Gunther*, 663 N.E.2d 1139, 1144 (Ill. App. Ct. 1996). Similarly, New York's courts have held that anti-suit injunctions bind only the parties specifically enjoined and not foreign courts, so there really is never any basis for enforcing such injunctions. *See, e.g., Brawer v. Pinkins*, 626 N.Y.S.2d 674, 677 (N.Y. Sup. Ct. 1995); *Dominick v. Dominick*, 205 N.Y.S.2d 503 (N.Y. Sup. Ct. 1960). These cases plainly conflict both with the decisions holding that the Full Faith and Credit Clause requires enforcement of foreign anti-suit injunctions and with those cases that would enforce anti-suit injunctions in limited circumstances.

This confusion has led states to strive for uniform recognition of insurance liquidation anti-suit injunctions by their adopting either the Uniform Insurance Liquidation Act (UILA) or the National Association of Insurance Commissioners (NAIC) Model Act. Rather than promote uniformity, however, these model acts have created further divisiveness. Many courts enforce their sister-states' anti-suit injunctions only if that state is a "reciprocal" insurance law state. *See, e.g., American Bonding Co. v. Coastal Metal Sales, Inc.*, 679 So.2d 1250 (Fla. Dist. Ct. App. 1996); *American Star Ins. Co. v. Grice*, 865 P.2d 507 (Wash. 1994); *Public Serv. Truck Renting, Inc. v. Ambassador Ins. Co.*, 572 N.Y.S.2d 559 (N.Y. App. Div. 1991); *Integrity Ins. Co. v. Martin*, 769 P.2d 69 (Nev. 1989); *Nasef v. U & I Inv., Inc.*, 755 P.2d 136 (Or. Ct. App. 1988); *State v. Ramos*, 534 N.E.2d 885 (Ohio Ct. App. 1987); *Martin v. General Am. Cas. Co.*, 76 So.2d 537 (La. 1954). Not surprisingly, this "reciprocity doctrine" has led to confused and inconsistent results in its own right. Here, for example, the Louisiana courts declined to enforce the Indiana court's anti-suit injunction because, they concluded, Indiana is not a reciprocal state under the UILA. Pet. App. 9a. However, in *Allied Fidelity Ins. Co. v. Ruth*, 790 P.2d 206, 209 (Wash. Ct. App. 1990), the court enforced an Indiana anti-suit injunction upon

finding that the liquidation statutes of Washington and Indiana were sufficiently similar to make Indiana a reciprocal state under the UILA. *See also Nasef*, 755 P.2d at 137 (Indiana is a reciprocal UILA state); *Ramos*, 534 N.E.2d at 886 (Indiana is a reciprocal NAIC Model Act state). The states' legislative efforts to impose order have thus failed, and the states continue to struggle to find and consistently apply various *ad hoc* guidelines concerning the enforcement of anti-suit injunctions.

B. Legal Scholars Have Long Recognized the Conflicts And Confusion Surrounding Foreign State Anti-Suit Injunctions.

As the cases demonstrate, the confusion over the credit due under the Full Faith and Credit Clause to foreign anti-suit injunctions has festered for some time. Scholars have frequently pondered this problem as well, and their comments show that deep fractures in this area persist.

Most prominently, Justice Ginsburg wrote in 1969 that "[t]he problem of the recognition due to a stay order, or antisuit injunction, outside the forum that rendered it remains unresolved and is among the most troublesome of open issues in the area of full faith and credit to judgments." Ruth B. Ginsburg, *Judgments in Search of Full Faith and Credit: The Last-in-Time Rule for Conflicting Judgments*, 82 HARV. L. REV. 798, 808 (1969). Justice Ginsburg proposed that "[a] general rule of respect for antisuit injunctions running between state courts would take the problem out of the limbo between the due process clause and the full faith and credit clause in which it now flounders . . . . [This solution] would be consistent with the generally strict line the Supreme Court has taken on full faith and credit to judgments." *Id.* at 828 (footnote omitted). Justice Ginsburg also emphasized that the full faith and credit problems posed by anti-suit injunctions are not only "troublesome," (*id.* at 808), but also "abrasive," (*id.* at 823), "conflict-generating," (*id.* at 824), and "perplexing," (*id.* at 830), and yet these issues not only remain "unresolved," (*id.* at 808), and

"open," (*id.*), but authority on the matter is also "notably murky," (*id.* at 823), and "flounders" in "limbo" (*id.* at 828). Thus, according to the comments of Justice Ginsburg, this issue is ripe for decision by this Court.[4]

More recently, other commentators have elaborated that the uncertainty over the enforceability of foreign anti-suit injunctions continues unabated. *See* Polly J. Price, *Full Faith and Credit and the Equity Conflict*, 84 VA. L. REV. 747, 754-61 (1998); Jean A. Mortland, *Interstate Federalism: Effect of Full Faith and Credit to Judgments*, 16 U. DAYTON L. REV. 47 (1990). Professor Mortland recognizes both that this Court has not addressed whether foreign anti-suit injunctions are entitled to full faith and credit and that this area of the law remains "uncertain." Mortland, 16 U. DAYTON L. REV. at 47, 71.

Professor Price, in discussing this Court's decision in *Baker*, observes that "*Baker* provides little guidance on the proper

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[4] Notably, Justice Ginsburg also proposed in her article that Congress might act to delineate the circumstances in which courts should honor foreign state anti-suit injunctions. Ruth B. Ginsburg, *Judgments in Search of Full Faith and Credit: The Last-in-Time Rule for Conflicting Judgments*, 82 Harv. L. Rev. 798 (1969). Congress, of course, has already determined by way of the McCarran-Ferguson Act that states should govern the business of insurance. *See* 15 U.S.C. § 1011 *et seq.* And, as federal courts addressing the matter have recognized, Congress's determination that states should control the business of insurance effectively identifies insurance liquidation anti-suit injunctions, which are critical to states' abilities to regulate insurance, as a category of injunctions deserving of full faith and credit. Compare *Brown v. Link Belt Div. of FMC Corp.*, 666 F.2d 110, 115 (5th Cir. 1982), and *Anshutz v. J. Ray McDermott Co.*, 642 F.2d 94, 95 (5th Cir. 1981) (both holding that the federal policy favoring state control over the business of insurance counsels in favor of honoring foreign state anti-suit injunctions) with *Ohio Reinsurance Corp. v. Pacific Reinsurance Mgmt. Corp.*, 1989 WL 16602, *2 (S.D.N.Y.) (holding that foreign insurance liquidation anti-suit injunctions are unenforceable because they do not purport to be final, but abstaining under the doctrine of *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943), in light of McCarran-Ferguson).

understanding of full faith and credit in the equity context, thus leaving open the possibility for continued confusion when state courts consider other types of equitable decrees." Price, 84 VA. L. REV. at 764-65. In *Baker*, Price notes, Justice Ginsburg's majority opinion both "conceded that the Court 'has not yet ruled on the credit due to a state court injunction barring a party from maintaining litigation in another State'" and also "stated that '[t]he Court has never placed equity decrees outside the full faith and credit domain.'" *Id.* at 766. (quoting *Baker*, 118 S. Ct. at 665 n.9). *Baker* ultimately leaves "considerable ambiguity" concerning anti-suit injunctions, according to Price. *Id.* at 768.

The scholarship of Justice Ginsburg and Professors Mortland and Price illustrates just how confused enforcement of anti-suit injunctions has become. There is little hope that a consensus on the enforceability of anti-suit injunctions will emerge. This Court's review is needed to put the matter to rest.

II. THE ENFORCEABILITY OF ANTI-SUIT INJUNCTIONS UNDER THE FULL FAITH AND CREDIT CLAUSE IS AN IMPORTANT AND RECURRING ISSUE.

The enforceability of foreign anti-suit injunctions under the Full Faith and Credit Clause is critical to the regulation of insurance: it can potentially become an issue with virtually every insurance insolvency (including both rehabilitation and liquidation) proceeding. Further, the array of anti-suit injunction cases shows that it also becomes important in a wide variety of other legal contexts.

A fundamental aspect of state regulation of insurance is the orderly rehabilitation and liquidation of insolvent companies. Anti-suit injunctions are vital to successful insolvency proceedings. These injunctions ensure that the insolvency court — the court responsible for ensuring that an ailing insurance company has an opportunity to recover or that policyholders and creditors are properly and fairly paid from a liquidated insurance

company's remaining assets — is able to control the proceeding without interference from an outside lawsuit. Without an enforceable anti-suit injunction, an insolvency court's efforts to protect a fragile company and to prioritize competing claims would be severely compromised.

Moreover, insurance insolvency anti-suit injunctions arise frequently. For the thirty-year period ending December 31, 1998, there were 640 property/casualty insurance insolvencies. A.M. Best Special Report, *Insolvency: Will Historic Trends Return?* (February 1999). This translates to an average of nearly two insolvencies per month. Over the most recent five year period, insolvencies have declined only slightly from the thirty-year average; they have continued at an average rate of slightly more than one per month. *Id.* Further, A.M. Best "expects the occurrence and failure rate of insolvencies in the near term to remain at comparable levels to the last five years," and possibly to rise over the long term. *Id.* Compounding the matter, each insolvency, with its accompanying anti-suit injunction, can spawn dozens of petitions seeking stays of ongoing litigation. Plainly, the interstate enforcement of anti-suit injunctions is an important and frequently recurring issue in the insurance-liquidation context alone.

Nor is the anti-suit injunction issue limited to insurance insolvencies. It also arises frequently, for instance, in divorce proceedings. *See, e.g., Abney v. Abney*, 374 N.E.2d 264 (Ind. Ct. App. 1978), *cert. denied*, 439 U.S. 1069 (1979); *Nowell v. Nowell*, 254 A.2d 889 (Conn.), *cert. denied*, 396 U.S. 844 (1969); *Corbin v. Corbin*, 226 A.2d 799 (Conn. Super. Ct. 1967); *Dominick v. Dominick*, 205 N.Y.S.2d 503 (N.Y. Sup. Ct. 1960); *Kleinschmidt v. Kleinschmidt*, 99 N.E.2d 623 (Ill. App. Ct. 1951). Parties who may be exposed to multiple judgments for the same wrong or obligation sometimes bring their own independent interpleader-type actions and seek to enjoin the claimants' lawsuits. *See, e.g., Lowe v. Norfolk & W. Ry. Co.*, 421 N.E.2d 971 (Ill. App. Ct. 1981); *Csohan v. United Benefit*

Life Ins. Co., 200 N.E.2d 345 (Ohio Ct. App. 1964). Likewise, courts adjudicating otherwise ordinary tort disputes often must confront whether to enforce a foreign state court's anti-suit injunction. *See, e.g.*, *James v. Grand Trunk W. R.R. Co.*, 152 N.E.2d 858, 866-67 (Ill.), *cert. denied,* 358 U.S. 915 (1958) (finding that the trial court was not required to honor a stay from a Michigan court that was deciding a wrongful death action); *Alford v. Wabash Ry. Co.*, 73 S.W.2d 277, 279 (Mo. Ct. App. 1934) (concluding that the trial court was not required to enforce an anti-suit injunction coming from a court in a FELA lawsuit); *Frye v. Chicago, R.I. & Pac. Ry. Co.*, 195 N.W. 629, 632 (Minn. 1923), *cert. denied,* 263 U.S. 723 (1924) (refusing to honor an anti-suit injunction emanating from a court deciding a personal injury lawsuit).

In sum, the role of anti-suit injunctions as a staple of insurance liquidation proceedings alone justifies this Court's attention to this case. The breadth of cases where courts confront the enforceability of anti-suit injunctions further underscores the importance of this Court's review of the issue. It is possible that all types of state courts, in all types of actions, at some point will need to wade through the inconsistent foreign anti-suit injunction precedents. This Court should take this case to provide these courts with clear guidance concerning the Full Faith and Credit Clause's impact on this issue.

III. THE DECISION BELOW WAS WRONG.

In addition to exacerbating the already-rampant confusion and conflict among state and federal courts concerning foreign anti-suit injunctions, the Louisiana courts were wrong in declining to stay this lawsuit.

First and foremost, the plain text of both the Full Faith and Credit Clause and its implementing statute apply to anti-suit injunctions. The Constitution's Full Faith and Credit Clause itself requires each state's courts to give full faith and credit to

the "judicial proceedings" of every other state. U.S. Const. art. IV, § 1. Similarly, the Clause's implementing legislation requires that "judicial proceedings . . . shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken." 28 U.S.C. § 1738. The national full faith and credit command thus applies broadly to all "judicial proceedings," and it makes no distinction between judgments awarding damages and judgments awarding injunctions. Indeed, the Framers knew how to make constitutional distinctions between law and equity: they did so in the Seventh Amendment, which guarantees a jury trial only for suits at common law. U.S. Const. amend. VII. As this Court recognized in *Baker*, "[t]he Court has never placed equity decrees outside the full faith and credit domain." *Baker*, 118 S. Ct. at 664.

By the same token, neither the text of Article IV, § 1 nor the full faith and credit statute provides any distinction between anti-suit injunctions and other injunctions. According to the plain text of these provisions, they apply to *all* judicial proceedings. *See Barber v. Barber*, 323 U.S. 77, 87 (1944) (Jackson, J., concurring). In fact, the Full Faith and Credit Clause is itself a type of anti-suit injunction. This alone is sufficient to reverse the Louisiana Supreme Court's decision.

To fulfill its intended purpose, moreover, the Full Faith and Credit Clause must apply to anti-suit injunctions. As this Court has repeatedly acknowledged, the purpose of the full faith and credit command

> was to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others . . . .

Milwaukee County v. M.E. White Co., 296 U.S. 268 (1935), *as quoted in Baker*, 118 S. Ct. at 663. Of particular importance

here, this Court has also noted that to achieve this purpose the Full Faith and Credit Clause "substituted a command for the earlier principles of comity . . . ." *Estin v. Estin*, 334 U.S. 541, 546 (1948). Because many state courts have not heeded the national full faith and credit command in considering anti-suit injunctions, but have instead resorted to the very principles of comity that the Full Faith and Credit Clause was intended to supplant, they have conflicted head-on with sister state courts. *See, e.g., State ex rel. Dykhouse v. Edwards*, 908 S.W.2d 686, 689-90 (Mo. 1995) (refusing to enforce a foreign anti-suit injunction based on comity); *Kleinschmidt v. Kleinschmidt*, 99 N.E.2d 623, 626 (Ill. App. Ct. 1951) (holding that principles of comity do not create reviewable standards for enforcing anti-suit injunctions); *Doyle v. Northern Pac. Ry. Co.*, 55 F.2d 708, 710 (D. Minn. 1932) (refusing to enforce a foreign anti-suit injunction based on comity principles); *Cook v. Delmarva Power & Light Co.*, 505 A.2d 447, 449 (Del. Super. Ct. 1985) (same). These courts have, in the anti-suit injunction context, felt "free to ignore obligations created under the laws or by the judicial proceedings" of other states. They have thereby created exactly the disunity that the national full faith and credit command was intended to avert.

Here, the Indiana court, having jurisdiction over the parties and the subject matter,[5] issued an order enjoining all lawsuits against Classic Fire. Indiana judges must accordingly stay any lawsuits against Classic Fire pending before their courts. *See* Ind. Code §§ 27-9-3-4 and 27-9-3-12. Thus, the Indiana court's anti-suit injunction bears all the indicia of a judicial proceeding entitled to full faith and credit outside of Indiana.

---

[5] Under this Court's decision in *Underwriters Nat'l Assur. Co. v. North Carolina Guar. Ass'n*, 455 U.S. 691 (1982), the liquidation court's full and fair adjudication that it has jurisdiction over the subject matter and necessary parties is entitled to deference by other courts that are asked to enforce the Indiana liquidation order and may not be collaterally challenged.

Yet the Louisiana courts decided not to enforce the anti-suit decree in this case, as mentioned, because they deemed Indiana not to be a "reciprocal" state with Louisiana when it comes to insurance liquidation orders. In other words, because Indiana's insurance liquidation public policy is not the same as Louisiana's, Louisiana has created an exception from full faith and credit for Indiana insurance liquidation orders. As this Court stated in *Baker*, however, there is no "roving 'public policy exception' to the full faith and credit due *judgments*." *Baker v. General Motors Corp.*, 118 S. Ct. at 664. Rather, "[r]egarding judgments . . . the full faith and credit obligation is exacting. A final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land." *Id.* at 663-64. Thus, where a liquidation court properly exercises its jurisdiction, the courts of other states are required to honor that injunction regardless of their public policy. *See Bard*, 839 S.W.2d at 794. The Louisiana Court was wrong not to honor the Indiana anti-suit injunction.

Even if for some reason the Full Faith and Credit Clause does not require interstate recognition of *all* anti-suit injunctions, the McCarran-Ferguson Act, 15 U.S.C. § 1011, *et seq.*, compels such recognition and respect in the insurance insolvency context. States have long exercised regulatory jurisdiction over domestic insurance companies, including the jurisdiction to liquidate insolvent companies. Congress intended McCarran-Ferguson to protect such traditional regulation of insurance companies, and thus effectively granted states special authority to supervise the fortunes of insurance companies. One critical component of this supervision is the ability to enjoin lawsuits against domestic insurance companies undergoing liquidation.

This power to stay litigation is analogous to Congress's automatic stay provision in the bankruptcy code. *See* 11 U.S.C. § 362. Without a stay of lawsuits pending against a company

in liquidation or bankruptcy, the remainder of the insolvency proceeding may fall apart or result in inequitable distributions of a failed company's remaining assets. Thus, just as a court's refusal to honor a bankruptcy stay would undermine the efficacy of the entire bankruptcy code, so does a court's refusal to honor a foreign state court's insurance liquidation anti-suit injunction undermine a state's insurance insolvency laws. Congress does not regulate insurance insolvencies the way that it regulates the insolvencies of other businesses; it has preserved that authority for states, the traditional regulators of insurance companies. To hold that a state's insurance liquidation anti-suit injunctions are not entitled to full faith and credit is to hold that Congress may not effectively protect such state regulatory authority. Therefore, the Louisiana Supreme Court's failure to accord full faith and credit to the Indiana anti-suit injunction must be reversed.

CONCLUSION

The Petition for a Writ of Certiorari to the Louisiana Supreme Court should be granted.

Respectfully submitted,

ROGER J. LARUE, JR.
3850 North Causeway Blvd.
Metairie, Louisiana 70002
(504) 834-0832

MATTHEW R. GUTWEIN
(Counsel of Record)
THOMAS M. FISHER
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Indianapolis, Indiana 46204
(317) 237-0300

Counsel for Petitioner

Dated: August 16, 1999

APPENDICES

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APPENDIX A

The Supreme Court of the State of Louisiana

ALICE BROWN

VS. No. 99-CC-1427

STATE FARM, ET AL

IN RE: McCarty, Sally B. Ins. Comm.; — Defendant(s); Applying for Supervisory and/or Remedial Writs; Parish of Orleans Civil District Court Div. "C" Number 86-16243; to the Court of Appeal, Fourth Circuit, Number 99CW-1166

May 17, 1999

Stay order denied. Writ denied.

WFM
HTL
CDK
BJJ
CDT
JTK

CALOGERO, C.J. not on panel.

Supreme Court of Louisiana
May 17, 1999

/s/ illegible
Clerk of Court
For the Court

APPENDIX B

COURT OF APPEAL, FOURTH CIRCUIT

STATE OF LOUISIANA

ALICE BROWN

versus

STATE FARM, ET AL.

In Re: SALLY B. MCCARTY, INSURANCE COMMISSIONER FOR THE STATE OF INDIANA

Applying for: EMERGENCY WRITS

Directed to: HONORABLE TERRI F. LOVE, JUDGE
CIVIL DISTRICT COURT
DIVISION "C", 86-16243

WRIT APPLICATION DENIED

Relator's application for supervisory writs is denied.
New Orleans, Louisiana this 13th day of May, 1999.

/s/ Judge Moon Landrieu
JUDGE MOON LANDRIEU

/s/Judge Joan Bernard Armstrong
JUDGE JOAN BERNARD ARMSTRONG

/s/ Judge Steven R. Plotkin
JUDGE STEVEN R. PLOTKIN

[File Mark: A TRUE COPY, New Orleans, May 13, 1999,
/s/ illegible, Clerk, Court of Appeal, Fourth Circuit]

APPENDIX C

CIVIL DISTRICT COURT
PARISH OF ORLEANS STATE OF LOUISIANA

NO. 86-16243 DIVISION "C" DOCKET 4

ALICE BROWN

VERSUS

STATE FARM, ET AL

SUPPLEMENTAL AND AMENDING PETITION

The supplemental and amending petition of Alice Brown, a person of age and a resident of the Parish of Orleans, State of Louisiana, with respect to this honorable court represents that:

I

Plaintiff(s) desires to supplement and amend the petition filed on or about September 9, 1986, by adding an additional article to be known and to read as follows:

1-A

First Horizon Insurance Company (hereafter Horizon) is a foreign insurance corporation, authorized to and conducting business in the State of Louisiana; that State Farm, John L. Retif, Laurice Hechler, School, and Horizon, are jointly, severally, individually, and in solido indebted unto plaintiff(s) in the full and true sum of $225,000.00, with legal interest from date of judicial demand until paid for the following reasons.

II

Plaintiff desires to amend articles 9 and 10 of her original petition to read as follows:

9.

Plaintiff(s) states that prior to this accident Horizon issued unto Orleans Parish School Board a policy of liability insurance, including a provision commonly referred to as uninsured motorist protection, or alternatively underinsurance coverage. This coverage was in force and effect at the time of this accident and plaintiff(s) desire(s) to avail herself of all benefits due thereunder.

10.

Subsequent to September 12, 1985, plaintiff(s) duly notified Horizon of the uninsured/underinsured motorist claim, and more than sixty days has elapsed but Horizon has refused to pay it. Plaintiff(s) states that such failure to pay is arbitrary, capricious, and without probable cause; therefore plaintiff(s) is entitled to 12% damages on the total amount of the loss, together with all reasonable attorney fees for the prosecution and collection of the uninsured/underinsured motorist claim.

III

Plaintiff(s) reiterates and reaffirms all of the allegations contained in the original petition as amended and supplemented hereby.

WHEREFORE, plaintiff(s) prays that permission be granted to file this supplemental and amending petition; that after due proceedings had, there be judgment in favor of Alice Brown and against State Farm and/or John L. Retif and/or Laurice Hechler and/or School and/or Horizon jointly, severally, individually, and in solido in the full and true sum of Two Hundred Twenty-Five Thousand ($225,000.00) Dollars; that this court find that Horizon's failure to pay the uninsured/ underinsurance claim of plaintiff(s) was arbitrary, capricious, and without probable cause, and accordingly that plaintiff(s) be awarded twelve percent (12%) damages on the total amount of the loss, together with all reasonable attorney fees for the prosecution and collection of these benefits; and for all general and equitable relief the law may permit.

KAMBUR & SUTHERLAND
Attorneys for Plaintiff
4700 Canal Street
New Orleans, LA 70119
488-2667

by: _____
Preston G. Sutherland
LA BAR #12590

ORDER

Considering the allegations and prayer:

IT IS ORDERED that the foregoing supplemental and amending petition be filed as prayed for and according to law.

New Orleans, Louisiana, this ____day of _____, 1988.

_____
JUDGE

Please serve:

original and supplemental petition on:

First Horizon Insurance Company
through:
Secretary of State
Baton Rouge, LA

supplemental petition only on:

1) State Farm, John L. Retif, and Laurie Hechler
through counsel of record:
C. Gordon Johnson, Jr.
704 Carondelet
New Orleans, LA

2) Orleans Parish School Board
through counsel of record:
Nahum Laventhal
3213 Metairie Road
Metairie, LA

CERTIFICATE OF SERVICE
I certify that a copy of the foregoing has been served upon counsel for all parties by placing a copy of same in the U.S. Mail, Postage Prepaid, addressed to their offices this ____ day of _____, 19__
_____

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 86-16243 DIVISION "C" DOCKET NO. 4

ALICE BROWN

VERSUS

STATE FARM, ET AL

FILED:_____ _____
DEPUTY CLERK

MAY IT PLEASE THE COURT

Attached hereto is a certified copy of the Order of the District Court in Marian County, Indiana placing Classic Fire and Marine Insurance Company in liquidation. Further, attached hereto are certified documents from the Louisiana Department of Insurance showing the following:

I.

That First Horizon Insurance Company merged with Classic Fire and Marine Insurance Company;

II.

That Classic Fire changed its name to Classic Fire and Marine Insurance Company.

Consequently, the predecessor company First Horizon Insurance Company, Classic Fire and Marine has been placed in liquidation by court of jurisdiction.

Any claims that the plaintiff may have must be brought in the appropriate court in Marian County, Indiana, and any rights to proceed in this case must be granted through the Court in Indiana.

A supplemental memorandum will be filed citing, in more detail, reasons for granting the Motion. For the above reasons, the undersigned hereby request that the Court enter a stay order prohibiting any further action against First Horizon Insurance Company until further order of the court in Indiana.

RESPECTFULLY SUBMITTED

/s/ Roger J. LaRue, Jr.
ROGER J. LARUE, JR. (#8054)
3850 N. Causeway Blvd., Suite 400
Metairie, Louisiana 70002
Telephone (504) 834-0832

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 86-16243 DIVISION "C" DOCKET NO. 4

ALICE BROWN

VERSUS

STATE FARM, ET AL

FILED:_____ _____
DEPUTY CLERK

MOTION FOR ENTRY OF A STAY ORDER

The undersigned counsel for First Horizon Insurance Company (now Classic Fire and Marine Insurance Company) hereby moves the Court for an Order staying the captioned matter for the reason that First Horizon Insurance Company, now Classic Fire and Marine Insurance Company has been placed in liquidation as more fully explained in the attached memorandum.

RESPECTFULLY SUBMITTED

/s/ Roger J. LaRue, Jr.
ROGER J. LARUE, JR. (#8054)
3850 N. Causeway Blvd.
Suite 400
Metairie, Louisiana 70002
Telephone (504) 834-0832

ORDER

CONSIDERING THE FOREGOING,

It is hereby ordered that Plaintiffs and intervenors show cause on the 7th day of May, 1999 at 9:00 a.m. why the above motion should not be granted.

NEW ORLEANS, LOUISIANA this _____day of _____, 1997.

_____
JUDGE

PLEASE SERVE

Alice Brown
through her attorney of record
Preston Sutherland
4702 Canal Street
New Orleans, Louisiana 70119

US Insurance Group
through its attorney of record
Miles Mark
71234 Hendry Avenue
Covington, Louisiana 70434

Intervenor,
Robert M. Hearin, Esq.
338 Baronne Street, Suite 300
New Orleans, LA 70112

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 86-16243 DIVISION "I" SECTION: 7

ALICE BROWN

VERSUS

STATE FARM, ET AL

FILED:_____ _____
DEPUTY CLERK

JUDGMENT

This matter came before the Court on Friday, May 7, 1999 on Defendants', Sally B. McCarty, Liquidator of Classic Fire and Marine, as successor in interest to First Horizon Insurance Company, Motion to Stay.

PRESENT: Preston Sutherland, Counsel for Plaintiff, Alice Brown;

Roger LaRue, Counsel for Defendant, Sally McCarty.

After oral arguments, the Court entered a Judgment denying the Motion to Stay. The Court finds that the defendant is not entitled to a Stay because the State of Indiana, the domiciliary state, has not adopted the "Uniform Insurers Liquidation Law". Thus, Indiana is not a reciprocal state within the meaning of the Uniform Act.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Liquidator's Motion be DENIED.

New Orleans, Louisiana, this 10th day of May, 1999.

/s/ Judge Terri F. Love
Judge Terri F. Love

[File Mark: A TRUE COPY
/s/ A.M. Hubbard,
DEPUTY CLERK, CIVIL DISTRICT COURT]

APPENDIX D

[Filed: January 7, 1998]

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE MARION CIRCUIT COURT

CAUSE NO. 49C01-9712-CP-2827

SALLY B. MCCARTY, as the Commissioner of the Department of Insurance of the State of Indiana,

Petitioner,

v.

CLASSIC FIRE & MARINE INSURANCE COMPANY,

Respondent.

ORDER

This matter comes before the Court upon the Rehabilitator's Verified Petition For Instructions Concerning Litigation and Other Matters ("Petition") filed on January 7, 1998, by Sally B. McCarty, Indiana Insurance Commissioner, as Rehabilitator of Classic Fire & Marine Insurance Company ("CFM"). Having considered the Petition, and being fully advised, the Court hereby finds (a) that the matters, facts and allegations set out in the Petition are true, (b) that each of the kinds of suits, actions or proceedings described in paragraphs 4 and 5 of the Petition would constitute an interference with this rehabilitation proceeding, (c) that an injunction, pursuant to Ind. Code 27-9-1-4, should be entered to prevent the commencement or prosecution of, or the taking of any and all such suits, actions or proceedings, and (d) that the requests in paragraphs 6 and 7 of the Petition should be granted.

It is, therefore, ORDERED, ADJUDGED and DECREED:

1. CFM's policyholders, insureds, creditors, shareholders, agents, brokers, reinsurers, ceding companies, reinsurance treaty holders, affiliates (including, but not limited to, the affiliates listed on Exhibit A of the Petition) and all other persons are hereby enjoined from:

(a) The commencement, prosecution or further prosecution of any suit, action or other proceeding against or involving CFM or the Rehabilitator in the nature of a class action under Rule 23 of the Federal Rules of Civil Procedure or any comparable state or federal procedural or equitable law, rule or doctrine;

(a)

(b) The commencement, prosecution or further prosecution of any suit, action or other proceeding, on behalf of, in the name of, or against or involving CFM or the Rehabilitator in the nature of a derivative action under Rule 23.1 of the Federal Rules of Civil Procedure or any comparable state or federal procedural or equitable law, rule or doctrine;

(c) The commencement, prosecution or further prosecution of any suit, action, or other proceeding against or involving CFM or the Rehabilitator, by way of original claim, third-party claim, joinder or otherwise (or by way of claim against an insured of CFM as to which CFM may be obligated to defend or to pay a judgment), which seeks any one or more of the following kinds of relief against CFM or the Rehabilitator, whether solely or in the alternative and whether joint, several, or joint and several with respect to one or more other defendants:

(i) money damages;

(ii) punitive damages;

(iii) the appointment of a receiver, trustee, referee, master or other similar court officer;

(iv) a mandatory or prohibitive injunction or restraining order;

(v) specific performance;

(vi) imposition of a constructive trust or equitable lien;

(vii) specific performance, rescission or similar relief arising from the issuance of any insurance product of CFM or the entering into any contract by or with CFM; or

(viii) declaratory relief as to liability in the nature of any of the foregoing;

(d) The obtaining of any preference, judgment, attachment, garnishment or lien against CFM or its property or assets, or any part thereof, wherever located, or the levying of execution against CFM or its property or assets, or any part thereof, wherever located, or the repossession of the property or assets of CFM, or any part thereof, wherever located, or the commencement, prosecution or further prosecution of any suit, action or proceeding having any such purpose or effect;

(e) The transfer, waste, or dissipation of the bank accounts or any of the property or assets of CFM, the transaction of any business of CFM without the approval of the Rehabilitator, or the withholding from the Rehabilitator of the books, accounts, documents, data processing and computer information, or other records relating to the business of CFM;

(f) The making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of CFM;

(g) Any other threatened or contemplated action that might lessen the value of CFM's assets or prejudice the rights of policyholders, insureds, creditors, shareholders, agents, brokers, reinsurers, ceding companies, reinsurance treaty holders or the administration of this proceeding under Ind. Code 27-9.

2. All persons desirous of commencing, prosecuting, or further prosecuting any suit, action, or proceeding described in the foregoing paragraph 1 of this injunctive Order are directed to do so in this Court as a part of this rehabilitation proceeding or, in the alternative, to seek leave of this Court, with prior notice to the Rehabilitator and his counsel, to institute or prosecute such action or proceeding elsewhere.

3. All secured creditors or parties, pledgees, lien holders, collateral holders or other persons claiming a secured, priority or preferred interest in any property or assets of CFM are enjoined from taking any steps whatsoever to transfer, sell, encumber, attach, dispose of or exercise purported rights in or against any property or assets of CFM without the prior approval of the Rehabilitator.

4. This injunctive Order is subject to Ind. Code 27-9 and to further order of this Court and is without prejudice to the right of any person (a) to request that any suit, action or proceeding described in paragraph 1 above be dismissed with or without prejudice or stayed, (b) to take any action directed toward such a dismissal or stay, or (c) to assert any claim against CFM or the Rehabilitator in this action.

5. The Rehabilitator is authorized to employ, or continue the employment of, appropriate special or local legal counsel to represent the interests of CFM or its insureds and the Rehabilitator, all upon such terms and conditions as the Rehabilitator considers necessary and to pay for such counsel out of the funds or assets of CFM.

6. The Rehabilitator is authorized to take such other action as the Court may deem appropriate.

Date: JAN 07 1998 /s/ William T. Lawrence
Judge, Marion Circuit Court

Copies to:

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Indianapolis, IN 46204-5140

[Filed: January 7, 1998]

STATE OF INDIANA)	IN THE MARION CIRCUIT COURT
) SS:	
COUNTY OF MARION)	CAUSE NO. 49C01-9712-CP-2827

SALLY B. MCCARTY, as the Commissioner of the Department of Insurance of the State of Indiana,

Petitioner,

v.

CLASSIC FIRE & MARINE INSURANCE COMPANY,

Respondent.

ORDER OF REHABILITATION

On December 10, 1997, the Court entered an Order of Seizure concerning Classic Fire & Marine Insurance Company ("CFM"). On January 7, 1998, Sally B. McCarty, as the Insurance Commissioner of the Department of Insurance of the State of Indiana, filed a Verified Consent Petition For Rehabilitation Order ("Petition") concerning CFM. CFM, acting by and through its Chief Executive Officer, Bob Roy, and pursuant to resolutions duly adopted by the Board of Directors of CFM, has executed a Consent to Order of Rehabilitation ("Consent").

Having considered the Petition and the Consent and being fully advised, the Court finds that the facts stated therein are true and that the relief sought in the Petition should be granted.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED:

(1) Indiana Insurance Commissioner Sally B. McCarty (and her successors in office) is hereby appointed Rehabilitator of CFM.

(2) The Rehabilitator is directed to take possession of the assets of CFM as soon as possible and to administer them under the general supervision of this Court.

(3) The Rehabilitator is directed to file accountings at least semiannually with this Court or at such other intervals as the Court may specify from time to time.

(4) The Rehabilitator is authorized to employ and to fix the compensation of such special deputies, counsel, clerks, and assistants as she considers necessary, and such compensation and all other expenses of her taking possession of CFM and of her conducting this proceeding shall be paid out of the funds or assets of CFM.

(5) The Court retains jurisdiction to issue such further orders as may be appropriate.

Date: JAN 07 1998 /s/ William T. Lawrence
Judge, Marion Circuit Court

[Filed: December 18, 1998]

STATE OF INDIANA)	IN THE MARION CIRCUIT COURT
) SS:	
COUNTY OF MARION)	CAUSE NO. 49C01-9712-CP-2827

SALLY B. MCCARTY, as the Commissioner of the Department of Insurance of the State of Indiana,

Petitioner,

v.

CLASSIC FIRE & MARINE INSURANCE COMPANY,

Respondent.

ORDER OF LIQUIDATION

Pursuant to the Court's Order of October 29, 1998, this matter comes before the Court upon the Rehabilitator's First Accounting and Petition for An Order of Liquidation and Related Relief ("Liquidation Petition"), filed on October 29, 1998, by Sally B. McCarty, Indiana Insurance Commissioner, as Rehabilitator of Classic Fire & Marine Insurance Company ("Classic Fire"). Written and published notice was given to all interested persons as shown by the Rehabilitator's Certificate of Compliance ("Compliance Certificate"), filed on December 17, 1998.

Objections were filed by or on behalf of (i) Sunday Udoinyion; (ii) Angelic Brown individually, and as next friend of Keenan Jones, a minor; and (iii) Alyce Wheeler. In her Notice of Objections to Liquidation, Angelic Brown requests that this Court lift the stay currently in effect as it relates to Classic Fire and its former subsidiary, Classic Syndicate, Inc. ("CSI").

The hearing on the Liquidation Petition was held on December 18, 1998. The Rehabilitator appeared by her Special Deputy Rehabilitator and by counsel and presented evidence through testimony and exhibits in support of the varius requests made in the Liquidation Petition. The Rehabilitator also presented evidence in support of the Rehabilitator's Recommendations Concerning Liquidation Procedures, Claims and Notices ("Recommendations") filed with the Court on December 7, 1998. By separate Order entered concurrently herewith, the Court has approved the Recommendations.

Having considered the Liquidation Petition and the Recommendations and the evidence, arguments, objections, statements and matters presented by interested persons, and being fully advised, the Court hereby finds that:

7. Classic Fire is an Indiana stock property and casualty insurance company formed pursuant to the Indiana Insurance Law and was authorized to engage in the insurance business in Indiana and some other states. This Court has general jurisdiction under Indiana Code § 27-9-1-1, et seq., over the rehabilitation and liquidation of Classic Fire. This Court also has summary jurisdiction to hear and determine the rights of all parties in interest pursuant to Indiana Code § 27-9-3-22.

8. The written, published, and other notice to interested persons evidenced by the Compliance Certificate constitutes the best notice practicable under the circumstances and meets the requirements of due process concerning such notice. Accordingly, this Court has constitutional as well as statutory power to enter an order of liquidation that is binding upon all parties and interested persons.

9. Classic Fire is insolvent. Further attempts to rehabilitate Classic Fire would substantially increase the risk of loss to creditors, policyholders and the public and would be futile. Sufficient grounds exist under Indiana Code §§ 27-9-3-5 and 27-9-3-6 for the entry of an order of liquidation, and such an order of liquidation should be entered under Indiana Code § 27-9-3-7.

10. The objections to the Liquidation Petition which were filed with the Court should be overruled. The request to lift stay should be denied. To the extent inconsistent with the relief requested in the Liquidation Petition and the Recommendations, any relief requested in said objections should be denied.

It is, therefore, ORDERED, ADJUDGED and DECREED that:

1. The rehabilitation proceeding concerning Classic Fire under the Order of Rehabilitation, dated January 7, 1998, is terminated.

2. Indiana Insurance Commissioner Sally B. McCarty and her successors in office are appointed Liquidator of Classic Fire under Indiana Code § 27-9-3-7, with all the powers provided by the Indiana Insurance Law, including Indiana Code § 27-9-1-1 et seq. The Liquidator may do all acts necessary or appropriate for the accomplishment of the liquidation of Classic Fire.

3. The objections to the relief requested in the Liquidation Petition and the Recommendations, as filed with the Court or made at the hearing, are hereby overruled. All requests for relief inconsistent with the relief requested in the Liquidation Petition and the Recommendations are denied.

4. Pursuant to Indiana Code § 27-9-3-12 and this Order of Liquidation, the request of Angelic Brown requesting that the Court lift the stay currently in effect as it relates to Classic Fire and its former subsidiary, CSI, is hereby denied.

5. The Liquidator is directed to mail a copy of this Order of Liquidation to counsel for each of the objectors.

6. The Liquidator is directed to take possession of the assets of Classic Fire and to administer them under the supervision of this Court. The Liquidator is directed to exercise any and all rights of Classic Fire in connection with any collateral or other assets being held for the benefit of Classic Fire by any person or entity. The Liquidator is vested by operation of law with the title to all of the property, contracts and rights of action, and all of the books and records of Classic Fire, wherever located.

7. The Liquidator shall file accountings with the Court no less frequently than semi-annually. The Liquidator is authorized to employ, or to continue to employ, and to fix the compensation of such special deputies, counsel, agents, clerks, accountants, actuaries, consultants, assistants and other personnel as she considers necessary, and all compensation and expenses of such persons and of taking possession of Classic Fire and conducting this proceeding shall be paid out of the funds or assets of Classic Fire.

8. Pursuant to Indiana Code § 27-9-3-8, all Classic Fire insurance policies will continue in force only until the earlier of (1) thirty (30) days from the date of this Order; (2) expiration of the policy coverage; (3) the date when the insured has replaced the policy coverage with equivalent coverage in another insurer or has otherwise terminated the policy; or (4) the date when the Liquidator has effected a transfer of the policy obligation.

9. No suit, action, proceeding, or claim at law or in equity of any kind shall be brought, maintained, or further prosecuted or presented on behalf of or in the name of Classic Fire or its Liquidator without the prior authorization of the Liquidator, except that with respect to such suits, actions, proceedings, and claims at law or in equity which have been initiated previously by Classic Fire or Classic Fire's former Rehabilitator, no further authorization by the Liquidator is necessary.

10. No action at law or in equity outside this Court may be brought against Classic Fire, its Liquidator, its former Rehabilitator, or its assets, whether in Indiana or elsewhere, nor shall any existing such actions outside this Court be maintained or further presented against Classic Fire.

11. Classic Fire insureds, creditors, employees, shareholders, agents, brokers, reinsurers, ceding companies, reinsurance treaty holders, and affiliates and all other persons are hereby enjoined from:

(a) The commencement, prosecution or further prosecution of any suit, action or other proceeding against or involving Classic Fire, its former Rehabilitator or the Liquidator in the nature of a class action under Rule 23 of the Federal Rules of Civil Procedure or any comparable state or federal procedural or equitable law, rule or doctrine;.

(b) The commencement, prosecution or further prosecution of any suit, action or other proceeding, on behalf of, in the name of, or against or involving Classic Fire, its former Rehabilitator or the Liquidator in the nature of a derivative action under Rule 23.1 of the Federal Rules of Civil Procedure or any comparable state or federal procedural or equitable law, rule or doctrine;

(c) The commencement, prosecution or further prosecution of any suit, action, or other proceeding against or involving Classic Fire, its former Rehabilitator or the Liquidator, by way of original claim, third-party claim, joinder or otherwise, which seeks any one or more of the following kinds of relief, whether solely or in the alternative and whether joint, several, or joint and several with respect to one or more other defendants:

(i) money damages;

(ii) punitive damages;

(iii) the appointment of a receiver, trustee, referee, master or other similar court officer;

(iv) a mandatory or prohibitive injunction or restraining order;

(v) specific performance;

(vi) imposition of a constructive trust or equitable lien;

(vii) specific performance, rescission or similar relief arising from the issuance of any insurance product of Classic Fire or the entering into any contract by or with Classic Fire; or

(viii) declaratory relief as to liability in the nature of any of the foregoing;

(d) The obtaining of any preference, judgment, attachment, garnishment or lien against Classic Fire or its property or assets, or any part thereof, wherever located, or the levying of execution against Classic Fire or its property or assets, or any part thereof, wherever located, or the repossession of the property or assets of Classic Fire, or any part

thereof, wherever located, or the commencement, prosecution or further prosecution of any suit, action or proceeding having any such purpose or effect;

(e) The transfer, waste, or dissipation of the bank accounts or any of the property or assets of Classic Fire, the transaction of any business of Classic Fire without the approval of the Liquidator, or the withholding from the Liquidator of the books, accounts, documents, data processing and computer information, or other records relating to the business of Classic Fire;

(f) The making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of Classic Fire;

(g) Any other threatened or contemplated action that might lessen the value of Classic Fire's assets or prejudice the rights of policyholders, insureds, creditors, shareholders, agents, brokers, reinsurers, ceding companies, reinsurance treaty holders or the administration of this proceeding under Indiana Code 27-9.

12. All persons wishing to commence, prosecute, or further prosecute any suit, action, or proceeding described in the foregoing paragraphs 9-11 of this Order are directed to do so in this Court as a part of this liquidation proceeding or, in the alternative, to seek leave of this Court, with prior notice to the Liquidator and his counsel, to institute or prosecute such action or proceeding elsewhere.

13. All secured creditors or parties, pledgees, lien holders, collateral holders or other persons claiming a secured, priority or preferred interest in any property or assets of Classic Fire are enjoined from taking any steps whatsoever to transfer, sell, encumber, attach, dispose of

or exercise purported rights in or against any property or assets of Classic Fire without the prior approval of the Liquidator.

14. Paragraphs 9-13 of this Order shall apply to any suit, action or proceeding against CSI or Classic Fire's predecessor companies, First Horizon Insurance Company and Classic Indemnity Company. They shall also apply to any suit, action or proceeding against the INEX Insurance Exchange (formerly known as the Illinois Insurance Exchange), the INEX Insurance Exchange Guaranty Fund or the INEX Insurance Exchange Immediate Access Security Association that is based on or arises out of: (a) the INEX Insurance Exchange's statutorily mandated oversight of CSI, (b) any insurance policy or reinsurance contract obligation of CSI, (c) any conduct of these entities related to the business, liabilities or assets of CSI, or (d) the liquidation of Classic Fire. They shall not apply to any suit, action or proceeding against an insured of Classic Fire, except to the extent that Classic Fire is a named defendant in such suit, action or proceeding.

15. Paragraphs 9-14 of this Order are subject to Indiana Code 27-9 and to further order of this Court and are without prejudice to the right of any person (a) to request that any suit, action or proceeding subject to paragraphs 9-14 of this Order be dismissed with or without prejudice or stayed, (b) to take any action directed toward such a dismissal or stay, or (c) to assert any claim against Classic Fire or the Liquidator in this action.

16. The Liquidator is authorized to employ, or continue the employment of, appropriate special or local legal counsel in jurisdictions outside Marion County, Indiana, to represent the interests of Classic Fire, the Liquidator, and its former Rehabilitator in prosecuting, defending or otherwise disposing of all litigation now pending or hereafter instituted by or

against Classic Fire, or by or against the Liquidator or the former Rehabilitator in her capacity as Liquidator or Rehabilitator of Classic Fire, or any or all of them, all upon such reasonable terms the Liquidator considers necessary and to pay for such counsel out of the funds or assets of Classic Fire.

17. This Court has by Order entered concurrently herewith established liquidation and claim filing procedures, including establishing December 31, 1999, as the "Bar Date" for the filing of claims against the estate of Classic Fire. All persons and entities with claims against Classic Fire are required to follow said procedures. Pursuant to Indiana Code §§ 27-9-3-10, 27-9-3-33 and 27-9-3-34, the Liquidator shall give appropriate Notice of this Order of Liquidation and of the procedures, as specified in the Order approving the Recommendations.

18. The Liquidator's counsel is directed to maintain, and periodically furnish to the Court, a Schedule of Attorneys for Service of Papers listing the names, addresses, telephone numbers, and clients of all attorneys who have made written request to be served with pleadings, orders and other documents filed or entered in this proceeding. An attorney wishing to be added to the Schedule shall notify in writing the Liquidator's counsel by directing such notice to Richard T. Freije, Jr., 300 North Meridian, Suite 2700, Indianapolis, Indiana 46204, and shall not be required to file a formal appearance. Any pleading, order, or other document filed or entered in this proceeding shall be served on all persons listed on the most current Schedule. Any person may obtain a copy of the then-current Schedule by sending a request, along with a stamped and self-addressed envelope, to the Liquidator's counsel at the address listed above.

19. The Liquidator is directed to maintain for inspection during regular business hours at the office of Classic Fire at 311 West Washington Street, Suite 200, Indianapolis, Indiana 46204, a duplicate set of the pleadings, orders, and other documents filed or entered in this proceeding. Any person wishing to obtain copies of pleadings, orders, or other documents, filed or entered in this proceeding shall make his request in writing to the Liquidator of Classic Fire at 311 West Washington Street, Suite 200, Indianapolis, Indiana 46204. Classic Fire is directed promptly after receiving a written request to make copies available at a charge of $.50 per page, checks to be made payable to "Classic Fire & Marine Insurance Company in Liquidation."

20. The Court determines that there is no just reason for delay, and therefore this Order of Liquidation is entered as a final judgment.

Date: DEC 18 1998

RECOMMENDED FOR APPROVAL
/s/ Theodore M. Sosin

APPROVED AND ORDERED:
/s/ William T. Lawrence
Judge, Marion Circuit Court

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MOTION FILED
SEP 16 1999

No. 99-292

In The

Supreme Court of the United States

SALLY B. MCCARTY, COMMISSIONER
OF THE INDIANA DEPARTMENT OF INSURANCE
AND LIQUIDATOR OF CLASSIC FIRE &
MARINE INSURANCE CO.,

Petitioner,

v.

ALICE BROWN, UNITED STATES FIRE
INSURANCE COMPANY and ROBERT HEARIN,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Louisiana

MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF and AMICUS CURIAE BRIEF OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS IN SUPPORT OF PETITIONER

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MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

The National Association of Insurance Commissioners (NAIC) respectfully moves this Court, pursuant to Rule 37.2(b), for leave to file a brief as an amicus curiae in this case in support of the Petition for a Writ of Certiorari, and in support of its motion states:

1. Counsel of record for NAIC attempted to obtain the consent of all parties to this matter to the filing of an amicus curiae brief by NAIC by contacting the parties' counsel of record.

2. The Petitioner, Sally B. McCarty, Commissioner of the Indiana Department of Insurance and Liquidator of Classic Fire and Marine Insurance Co., has consented to the filing of an amicus curiae brief by NAIC through her counsel of record, Matthew R. Gutwein of the firm of Baker & Daniels.

3. None of the Respondents have replied to NAIC's request for their consent.

4. NAIC has a strong interest in this case as set out fully in the brief submitted with this motion.

WHEREFORE, premises considered, the National Association of Insurance Commissioners (NAIC) respectfully moves this Court for leave to file a brief as amicus

curiae in support of the Petition for a Writ of Certiorari in this case pursuant to Rule 37.2(b) of this Court.

Respectfully submitted,

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INTEREST OF THE NAIC[1]

The National Association of Insurance Commissioners (NAIC) is a non-profit, unincorporated association established in 1871, whose membership consists of the principal insurance regulatory officials of the 50 States, the District of Columbia, and the territories and insular possessions of the United States.

In submitting this amicus curiae brief, the NAIC seeks to demonstrate its interest in this proceeding and to fulfill the mission of the NAIC, as set out in its Constitution, to:

> . . . assist state insurance regulators, individually and collectively, in serving the public interest in achieving the following fundamental insurance regulatory goals in a responsive, efficient and cost-effective manner, consistent with the wishes of its members:
>
> 1. Protect the public interest, promote competitive markets and facilitate the fair and equitable treatment of insurance consumers;
> 2. Promote the reliability, solvency and financial solidity of insurance institutions; and
> 3. Support and improve State regulation of insurance.

The interest of the NAIC arises out of the responsibility vested in each insurance commissioner, superintendent or director (hereinafter commissioner) to regulate

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[1] Counsel for a party did not author this brief in whole or in part. No person or entity, other than the *Amicus Curiae*, its members, or its counsel made a monetary contribution to the preparation and submission of this brief.

the business of insurance by virtue of the authority vested in the States by the McCarran-Ferguson Act, 15 U.S.C. § 1011 *et seq.* and pursuant to State laws.

One of the most important activities conducted by the members of NAIC is the development of model laws and regulations to address problems and issues common to the various states. These models serve as guideposts for member commissioners and their respective staffs in developing proposed legislation for submission to State legislatures and in promulgating rules and regulations for the effective regulation of the business of insurance.

The fundamental goal of all insurance regulation is to make certain that insurance companies, having collected premiums from insurance consumers, are able to keep their commitment to pay claims under the policies issued to those consumers. When an insurer becomes financially impaired or worse, insolvent, the ability of the insurer to keep that fundamental commitment is jeopardized.

Each state has enacted laws that provide for an orderly scheme for the administration of the affairs of impaired or insolvent insurers. These laws are designed to facilitate the rehabilitation of the insurer if that is possible, and if not, the equitable distribution of the insurer's assets to those who have claims against it in accordance with a prescribed priority of distribution. Typically, these laws are either based on the NAIC Insurers Rehabilitation and Liquidation Model Act or are very similar to the Model Act in key respects. Each state legislature has granted the insurance commissioner in that state the exclusive authority to commence delinquency proceedings against impaired or insolvent

insurers, and only the insurance commissioner may be appointed as receiver of such insurers. The insurance commissioner, once appointed as receiver by a state court, conducts the rehabilitation or liquidation of the insurer, subject to the court's supervision.

This case presents the question of whether a Louisiana state court must accord full faith and credit to the anti-suit injunctive provisions of an order of liquidation issued by an Indiana state court against an Indiana-domiciled insurance company. This issue has long troubled state insurance regulators. The first uniform rehabilitation and liquidation act, adopted by the NAIC in 1936, was designed to facilitate the cooperation of the states in the event of the receivership of an insurer operating in multiple states.

> "Commissioner Pink: I have a committee report on Interstate Liquidations. I think, Mr. President, we have all felt there is a very wasteful situation present where a large interstate company is liquidated in one state and you have to operate through receivers appointed by the courts of the various states in which that company has property or assets. We have found in New York that the system is tremendously wasteful and that the assets that should go to creditors are dispersed and merely wasted in this method of handling. There is no businesslike system whatsoever.
>
> A sub-committee was appointed to draft a proposed law which could be adopted as a uniform law in the various states and which would simplify this matter and give the home state control over the assets and over the liquidation of the company in the various states. . . . "

1936 *Proceedings of the National Association of Insurance Commissioners*, I, p. 29.

At the heart of the first model insurer rehabilitation and liquidation act were reciprocal provisions. These provisions establish the state of domicile of the subject insurer as the controlling forum for delinquency proceedings, and mandate the equitable treatment of all policyholders and creditors, regardless of their state of residence.

In 1969, the NAIC adopted the Wisconsin Liquidation Act as its model and recommended that other states adopt the Wisconsin Act. In 1978, the NAIC developed and adopted the Insurers Rehabilitation and Liquidation Model Act. Both the Wisconsin Act and the 1978 Model Act contain reciprocal provisions. Thirty-three states have adopted the NAIC Model Act or substantially similar legislation.[2] *NAIC Model Laws, Regulations and Guidelines, Vol. III*, pp. 63-67, Insurers Rehabilitation and Liquidation Model Act (July 1999).

In 1939, the Uniform Insurers Liquidation Act (UILA) was approved by the National Conference of Commissioners on Uniform State Laws and the American Bar Association. The UILA addresses issues of interstate

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[2] Indiana is one of the 33 jurisdictions that has adopted the NAIC Model Act or substantially similar legislation. While Louisiana is not considered to have adopted the NAIC Model Act, its statutory scheme for the administration of impaired or insolvent insurers is similar to that of Indiana, and contains the provisions of the Uniform Insurers Liquidation Act. Both states have enacted the statutory provisions necessary to be considered reciprocal jurisdictions by NAIC. (See App. A)

cooperation with regard to delinquency proceedings against multi-state insurers, and sets out provisions necessary for states to treat each other as reciprocals in such matters. Portions of the Prefatory Note to the UILA are particularly relevant to this case:

> "Depression conditions have resulted in recent years in the forced liquidation or reorganization of many insurance companies. These proceedings have brought to light certain problems peculiar to the liquidation of business having assets and liabilities in two or more states. Insurance company assets take the form, for the most part, of special deposits required by state law, balances in the hands of insurance agents, policy premiums due but unpaid, and investments of reserve funds. The greater number of these assets naturally have their situs in the state of domicile of the company, but a substantial portion is normally scattered over the entire territory within which the company carries on its business. This is necessarily true of the special deposits required by the laws of non-domiciliary states and the balances in the hands of non-resident agents. On the other side of the balance sheet the liabilities of insurance companies, consisting primarily of policy obligations, are also distributed over the several states in which the companies do business. This wide distribution of assets and liabilities creates a formidable assay of problems when liquidation, rehabilitation or reorganization proceedings become necessary for an insurer which has drifted into financial difficulties. The equitable and expeditious solution of these problems is rendered the more difficult by wide differences in the provision of the statutes of the several

states regarding such matters as special deposits, preferred claims, securities, set-off, and the administrative and judicial procedures to be followed. If statutory means can be provided which will facilitate delinquency proceedings by eradicating these difficulties they will be of great service.

Specific features of insurer delinquency proceedings causing the greatest embarassment are the following:

. . .

2. Very frequently the domiciliary receivers whether or not deemed statutory successors to the defunct companies, have but little authority in non-domiciliary states, and in some states they receive no recognition whatsoever. As a consequence, company assets located outside the home states are likely to be dissipated, and, unless ancillary proceedings are started, debtors living in such states are all too frequently able to avoid meeting their just obligations.

. . .

6. Finally, inequity often results from the fact that creditors in non-domiciliary states may, if they are sufficiently well informed and diligent, obtain preferences for themselves by commencing attachment or similar proceedings against such property as may be found in their respective states. Such proceedings can easily be commenced by properly informed creditors before ancillary proceedings are started, and as a result other less well-informed creditors suffer accordingly. There is no just reason for permitting such preferences to prevail.

> All of the foregoing difficulties may easily be eliminated if the several states will adopt a properly formulated uniform act containing appropriate reciprocal provisions. The Uniform Insurers Liquidation Act is designed to accomplish this end. . . . It is believed that a general adoption of the Act will greatly facilitate proceedings commenced for the liquidation, rehabilitation or reorganization of insurance companies and will promote the equitable distribution of the assets of defunct insurers."

13 *Uniform Laws Annotated,* pp. 322-323 (1986).

The business of insurance is and has always been an interstate business. An insurer based in one state may be licensed to conduct business in each of the other 49 states. The impairment or insolvency of a multi-state insurer involves many competing interests in the same pool of assets. Policyholders and creditors in each state where the company transacted business must be treated equitably. Absent cooperation between insurance regulators and the courts of each state with a stake in the affairs of the troubled company, chaos results. Both the NAIC Model Act and the UILA were designed to facilitate interstate cooperation and avoid such problems. The case at bar is an example of exactly the situation that both the NAIC Model Act and the UILA were designed to prevent, where one state has refused to recognize an order issued by the courts of another state as to one of its domestic insurance companies.

The members of the NAIC, as the chief insurance regulators in each state, have a compelling interest in seeing that the policyholders and other creditors who

reside in their state are treated fairly in the event of the impairment or insolvency of a multi-state insurer. Likewise, each member of the NAIC has a strong interest in knowing that he or she will not be frustrated in their attempt to manage the receivership of a domestic insurance company by the failure of the courts of other states to honor orders issued by the courts of the state of domicile.

SUMMARY OF ARGUMENT

1. The interests involved in this case are not limited to those of the Petitioner, the Respondents, Indiana and Louisiana, but include all policyholders and creditors of the insolvent company. Only if the orders of the Indiana receivership court are accorded full faith and credit in other states can the Petitioner meet her fiduciary duty to all concerned.

2. The domiciliary regulator cannot effectively implement a plan of reorganization or rehabilitation without the cooperation of the courts in sister states. It is critical that the anti-suit injunctive provisions in rehabilitation orders be accorded full faith and credit in non-domiciliary states.

3. The prevention of preferences is critical to an orderly liquidation and the equitable distribution of assets. Anti-suit injunctive provisions in receivership orders facilitate an orderly liquidation by preventing creditors from obtaining preferences.

ARGUMENT

INTRODUCTION

The NAIC is vitally concerned with the enforceability of anti-suit injunctions in the setting of the rehabilitation or liquidation of a multi-state insurer. The decision below allows the courts of Louisiana to place the interests of one of its citizens above the interests of all other persons with a stake in the receivership of an Indiana-domiciled insurance company. The decision of the Supreme Court of Louisiana, if allowed to stand, will frustrate the efforts of Petitioner to conduct an orderly liquidation proceeding and to equitably distribute the assets of an insolvent insurer among all of its creditors.

I. THE ENFORCEABILITY OF ANTI-SUIT INJUNCTIONS UNDER THE FULL FAITH AND CREDIT CLAUSE IS CRITICAL, ESPECIALLY AS REGARDS INSURER DELINQUENCY PROCEEDINGS.

The enforceability of anti-suit injunctions under the Full Faith and Credit Clause is an important and recurring issue, especially as regards the rehabilitation or liquidation of a multi-state insurance company. This case presents the question of whether the courts of a non-domiciliary state must accord full faith and credit to the anti-suit injunctive provisions of an order of liquidation issued by a court in the state of domicile of an insolvent insurance company.

Classic Fire & Marine Insurance Company ("Classic Fire"), an Indiana-domiciled insurer, was placed in rehabilitation on January 7, 1998 and in liquidation on

December 18, 1998. Both the rehabilitation order and the liquidation order were issued by the Marion County, Indiana Circuit Court. Both orders contained provisions enjoining the prosecution of all lawsuits against Classic Fire in courts other than the Indiana receivership court. The issuance of such injunctions is specifically authorized by Ind. Code § 27-9-1-4 and Ind. Code § 27-9-3-12.

Petitioner Sally B. McCarty, the Insurance Commissioner for the State of Indiana and the duly appointed receiver of Classic Fire, entered an appearance in the Civil District Court for the Parish of Orleans, Louisiana for the purpose of seeking a stay of litigation pending in that court against Classic Fire. The Louisiana trial court denied McCarty's petition on the basis that Indiana is not a reciprocal state with Louisiana under the Uniform Insurers Liquidation Act. McCarty unsuccessfully sought to have the trial court's ruling overturned in the Louisiana Fourth Circuit Court of Appeals and the Supreme Court of Louisiana.

The NAIC supports Petitioner's effort to obtain review by this Court of the Supreme Court of Louisiana's order denying her application for a stay of the Louisiana lawsuit. As Petitioner notes in her Petition for a Writ of Certiorari, this Court "has not yet ruled on the credit due to a state court injunction barring a party from maintaining litigation in another State." *Baker v. General Motors Corp.*, 118 S.Ct. 657, 665 n. 9 (1998). As Petitioner demonstrates, the lower courts, both state and federal, have struggled with this issue and have reached conflicting results. The conflict existing among the lower courts and the importance of the matters at stake argue for this Court's review of this case.

A. The Interests Involved Are Not Limited to Indiana and Louisiana.

The interests involved in this case are not limited to those of the Petitioner, the Respondents or the States of Indiana and Louisiana. Classic Fire is a multi-state insurer. The company wrote business in at least 47 states.[3] Every policyholder with an unpaid claim or due a refund of unearned premium, regardless of their place of residence, has an interest in the liquidation proceeding in Indiana. Every creditor to whom Classic Fire owes a debt has an interest in the estate. Even the federal government may have an interest in the Classic Fire liquidation if the insurer owes federal income or other taxes.

Petitioner, as liquidator of Classic Fire, has been charged with the duty of protecting and reconciling these various and competing interests in a limited pool of assets in the Indiana liquidation proceeding. The interest of one citizen of the State of Louisiana should not take precedence over the good of all parties concerned. Only if the orders of the Indiana receivership court are accorded full faith and credit by the courts of other states can Petitioner effectively discharge her fiduciary responsibilities to all concerned.

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[3] 1996 Annual Statement.

B. Efforts to Rehabilitate a Troubled Insurer Are Hampered by the Refusal of other State Courts to Honor Anti-Suit Injunctions.

The efforts of the domiciliary commissioner to reorganize or rehabilitate a financially impaired insurer are hampered by the refusal of other state courts to honor the anti-suit injunctive provisions of orders of rehabilitation. In order to have any chance at the successful rehabilitation of a troubled insurance company, the domiciliary regulator must establish control of the company's assets and liabilities. The rehabilitator must be able to implement corrective action to improve the insurer's condition and negotiate transactions such as the sale of blocks of unprofitable business or infusions of needed capital.

It is impossible to achieve control of the company in the absence of the cooperation of insurance regulators and the courts in the other states where the company transacted business. The rehabilitator cannot focus on the problems of the troubled company and institute needed corrective action if he or she must defend multiple lawsuits in multiple jurisdictions. The goal of the domiciliary regulator in a rehabilitation proceeding is the restoration of the company to financial stability. The return of the company to financial stability is in the best interest of all concerned. However, absent the cooperation of the courts of sister states in honoring the provisions of the rehabilitation order, it is unlikely that such a proceeding will succeed. If policyholders and creditors of the troubled company in other jurisdictions are free to pursue their own selfish interests, without regard to the effect that their actions will have on the company and efforts to revive it, rehabilitation efforts are doomed from the start.

It is, therefore, critical that the anti-suit injunctive provisions in rehabilitation orders be accorded full faith and credit in jurisdictions other than the state of domicile.

C. An Orderly Liquidation Is Not Possible If Anti-Suit Injunctions Are Not Honored by Non-Domiciliary State Courts.

An orderly liquidation proceeding is not possible if the anti-suit injunctive provisions of the domiciliary court's liquidation order are not honored by the courts of non-domiciliary states. An insurance company liquidation proceeding consists of three parts. First, the liquidator must marshal all of the assets of the insolvent insurer. Second, the assets must be converted to cash or cash equivalents. Finally, the assets must be distributed to those with claims against the insolvent company according to an order of distribution prescribed by statute. This equitable distribution of the assets of the insolvent insurer is the end goal of a liquidation proceeding.

An equitable distribution of the assets of an insurer in liquidation cannot be achieved if creditors are allowed to obtain preferences by helping themselves to the insurer's assets outside the proceeding in the state of domicile. The most important purpose of anti-suit injunctive provisions in an order of liquidation is the prevention of preferences. Only if such orders are accorded full faith and credit and enforced by the courts of non-domiciliary states can the liquidator properly discharge his or her statutory duty to pay over to each creditor their fair share of the assets of the insurer.

CONCLUSION

It is critical to the efforts of state insurance regulators in managing the affairs of impaired or insolvent insurers to achieve the best result for all concerned that the anti-suit injunctive provisions in orders of rehabilitation or liquidation entered by the domiciliary receivership court be honored by non-domiciliary states. State and federal courts have been inconsistent in their rulings on the question of whether such orders should be accorded full faith and credit. The NAIC urges the Court to grant the Petition for a Writ of Certiorari so that this issue might be resolved.

Respectfully submitted,

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APPENDIX

APPENDIX A

NAIC
RECIPROCAL/NONRECIPROCAL STATES
UNDER THE LIQUIDATION ACTS

The following is a list of jurisdictions that are reciprocal and are not reciprocal under the various states' liquidation acts.

RECIPROCAL STATES

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
Florida
Georgia
Guam
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Puerto Rico
Rhode Island
South Carolina
South Dakota
Tennessee
Utah
Vermont
Virgin Islands
Washington
West Virginia
Wisconsin
Wyoming

NONRECIPROCAL STATES

District of Columbia
Texas
Virginia